

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALI MOHAMED ELMI,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

CASE NO. C19-0945-JCC

ORDER

This matter comes before the Court on Petitioner's objection (Dkt. No. 7) to the report and recommendation ("R&R") (Dkt. No. 6) of the Honorable Mary Alice Theiler, United States Magistrate Judge. Having thoroughly considered the parties' briefing and the relevant record, the Court hereby OVERRULES Petitioner's objection and ADOPTS Judge Theiler's R&R.

This case is a federal habeas action filed pursuant to 28 U.S.C. § 2254. (Dkt. No. 4.) Petitioner is currently confined at the Coyote Ridge Corrections Center. (*Id.* at 1.) He challenges a 2005 judgment of the King County Superior Court. (*Id.*) Judge Theiler recommends dismissing Petitioner's petition without prejudice because he has not exhausted his state court remedies. (Dkt. No. 6) In his objection to Judge Theiler's R&R, Petitioner explains that he purposefully did not do so because it would be futile. (Dkt. No. 7.)

The Court shall not grant a writ of habeas corpus on behalf of a state prisoner unless: (1) the prisoner has exhausted the remedies available in the courts of the state; or (2) there is an

1 absence of available state corrective process or circumstances exist that render such process  
2 ineffective to protect the rights of the applicant. 28 U.S.C. § 2254(b)(1).

3 A petitioner seeking relief under § 2254 may only appeal a district court's dismissal of  
4 his federal habeas petition after obtaining a certificate of appealability. 28 U.S.C. § 2253(c)(1). A  
5 certificate of appealability may only issue where a petitioner has made "a substantial showing of  
6 the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make a substantial  
7 showing of the denial of a constitutional right, the petitioner must "demonstrat[e] that jurists of  
8 reason could disagree with the district court's resolution of his constitutional claims or that  
9 jurists could conclude the issues presented are adequate to deserve encouragement to proceed  
10 further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The Court finds that Petitioner is not  
11 entitled to a certificate of appealability in this matter. Therefore, the Court DENIES the issuance  
12 of a certificate of appealability.

13 **I. CONCLUSION**

14 For the foregoing reasons, Petitioner's objection (Dkt. No. 7) are OVERRULED, Judge  
15 Theiler's R&R (Dkt. No. 6) is ADOPTED, and Petitioner's petition for a writ of habeas corpus  
16 (Dkt. No. 4) is DISMISSED without prejudice for failure to exhaust state court remedies.  
17 Petitioner's motion to compel discovery (Dkt. No. 5) is STRICKEN as moot.

18 DATED this 30th day of July 2019.

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22 John C. Coughenour  
23 UNITED STATES DISTRICT JUDGE  
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